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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,163	08/17/2001	William Ellis Leslie	RSW920010164US1	4683

7590 07/13/2006
IBM CORPORATION
INTELLECTUAL PROPERTY LAW
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EXAMINER

SMITH, TRACI L

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/932,163

Applicant(s)

LESLIE ET AL.

Examiner

Traci L. Smith

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 11-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2 and 11-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to papers filed on March 7, 2006.


1. In view of the appeal brief filed on March 7, 2006, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:


DENNIS RUHL
PRIMARY EXAMINER
Acting SPE 3629

The examiner notes that the appeals committee felt that prosecution should be re-opened to re-instate the 112 1st rejection against the claim of "majority-vote" algorithm and new rejections against the enablement of "deducing a value". The examiner further notes that applicant has the right to go directly to appeal and have the brief dated May 1, 2006 re-instated. However, applicants brief is improper according to

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the new guides lines set forth in MPEP 1205 [R-3]. Applicants summary of claimed subject matter is only supposed to address limitations of the INDEPENDENT claims involved on appeal. However, in the interest of advancing prosecution the application is being re-opened rather than the brief being returned for non-compliance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-2 and 11-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement as well as new enablement rejections on additional limitations. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

4. Claims 1-2 and 12-17, 19-21 and 24-30, 34-36 recite the limitations of "deducing a value" of variables, however the disclosure fails to teach how the "deducing" is done. Examples are given when a specific type of variable is used and what those variables indicate. However, there are no specific steps that would allow one skilled in the art to make and/or use the applicants invention to "deduce" the value of a variable. Applicant fails to identify how a variable is even identified and/or know to the user let alone how one would "deduce" a value of this unknown variable.

5. Claims 13, 20 and 25 recite the limitation of "majority-vote" algorithm. Applicants disclosure states using log entries in the majority-vote algorithm in which the log with the greatest number of entries is the majority and that type, however, the applicants disclosure fails to teach how one of ordinary skill in the art at the time of invention would identify what is placed into which category log. The disclosure makes suggestions by way of examples but not specific teaching for one to understand how to determine what action or event would be determined as for example extroversion or introversion.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 11-33 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5, 987, 415 Breese et al; Modeling a User's emotion and Personality in a computer user interface.

3. As to claims 1, 11, 18 and 23 Breese teaches

Tracking user personality and emotions and interpret as a type(C. 11 I. 5-9)

Assigning value to the type(C. 12 I. 27-29)

Customizing output information according to type(c. 13 I. 31-33).

4. As to claims 2, 16-17 and 28-29 Breese teaches the process over the internet, LAN etc.(C. 4 I. 60-61).

5. As to claims 12, 19 and 24 Breese teaches identifying the type of personality based on values of variables against personality indicators(C. 13 I. 27-29).
6. As to claims 13, 20 and 25 Breese teaches the use of algorithms and binary variables to determine type(C. 12 I. 29-33 and C. 10 I. 35-39, 53-56).
7. As to claims 14, 21 and 26 Breese teaches generating a user record according to type and storing record in various storage mediums(C. 7 I. 13-16).
8. As to claims 15, 22 and 27 Breese teaches using record to customize output information according to personality type(C. 13 I. 25-35).
9. As to claims 30-33 Breese teaches the personality identifiers to be Myers Briggs.(C. 8 I. 61-65).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5, 987, 415 Breese et al; Modeling a User's emotion and Personality in a computer user interface as applied to claims 1, 11-33 above, and further in view of US Patent 5,848,396 Gerace Method and Apparatus for Determining Behavioral Profile of A Computer User.

13. As to claims 34-36 Breese teaches the monitoring and deducing of personality types. However, Breese fails to teach when it begins to use the information acquired to begin creating a profile for the user. Gerace teaches identifying when a user begins and finishes the session, and once finished uses the information to create a profile. It would have been obvious to one skilled in the art at the time of invention to combine the teachings of Gerace with Breese so that they program has a complete log of information required and/or needed to appropriately identify the users personality type.

Response to Arguments

14. Applicant's arguments filed May 1, 2006 have been fully considered but they are not persuasive. Applicants main arguments regarding claims 1-2 and 30 are directed to the limitation of "logging". Applicant argues that Breese does not teach the step of logging. The examiner notes that anytime information is input into a system or computer program it is inherent that this information is being "logged". In C. 12 I. 50-53 Breese states that the Bayesian network "receives inputs from the user interface that represent observations of the users behavior. Therefore, these observances are input into the system and inherently are logged into the method and system.

15. As to applicants argument that Breese does not “deduce” a value for a personality type because no events have been logged. As the examiner has indicated that input of user information is inherently “logging”, the examiner notes that in C. 12 I. 45-48 Breese teaches using a copy of the Bayesian network to “diagnose” the user. As well as C. 12 I. 53-55 Breese teaches the model being used to infer emotional state and the personality of the user.

16. As to applicants arguments that Breese makes an “Assumption” rather than “inferred” determination of values. The examiner notes that both an assumption and an inference or a matter of a persons opinion. Neither have a structure or specific application or rule that is used in making an assumption or inference.

17. Applicant further argues that Breese fails in “customizing the presentation of information to the user according to the value of the variable of personality type indicator.” The examiner notes that Breese teaches an empathetic agent that mood an personality match that of the user(C. 13 I. 31-33). This agent is develop by the policy module. As examiner pointed out the module uses the user inputs to determine the emotional state and the personality of the user. Therefore examiner maintains that Breese teaches the customizing of information according to applicants claims. The examiner notes, applicant does not claim specific values or terms for the variables. The examiner notes that Breese’s use of emotions a responses that are observed and recognized are set according to the appropriate Bayesian network value(C. 13 I. 17-18).

18. Applicant contends that Breese does not anticipate claims 11, 18 and 23 because Breese fails to teach recording a value for "each specific event". However, the examiner maintains that Breese is assigning a value for each node.(C. 13 I. 116-19).

19. As to applicants arguments that Breese fails to identify analyzing the values of each separate log for personality type indicators. The examiner notes that each users personality is determined separately therefore it is inherent that there are separate logs that are analyzed according to the personality type values at each node. Furthermore, the examiner note that applicant fails to distinguish or identify that the separate logs are distinct from each other or different in specific ways. The examiner notes for the record however, that this would be an obvious variation of the prior art if the logs were to be distinctly identified.

20. As to applicants arguments that Breese fails to teach identifying the best personality type indicator, that Breese identifying the emotional and personality type of a user thru probabilities is not an equivalent to "deducing a personality type indicator" for claims 12, 19 and 24. The limitation of "deducing" is a broad term and when given it's broadest reasonable interpretation using probabilities to determine a personality type is the equivalent to applicants deducing. Furthermore, applicant states that Breese fails to teach the "majority-vote" algorithm. Applicants disclosure of a majority vote algorithm is merely which type has the great occurrence. The algorithm is given a broad definition and doesn't expressly limit what algorithm is used to identify the values. Breese teaches that the 2-dimensional variables can be used and describes the variables having a higher and/or lower state to determine which personality dimension the user

falls. Applicants disclosure teaches the "majority-vote" algorithm determining which personality type indicator for they user based on which of the 2-way variable has more occurrences. Therefore, Breese's 2-dimensional variables and the level of states is the equivalent to the applicant use of variables in the majority-vote.

21. Applicant repeats arguments that Breese fails to get the user information and customize information presented to the user based on the users personality. The examiner notes this argument has been address previously in that "inputting user information to determine a users emotional state and personality which in turn is used to determine the personality of the agent presented to the user.

22. As to applicants arguments that Breese in combination with Gerace fail to teach the limitations of claims 34-36 in which a users session is identified as active or not and making the personality determination based on the information provided at that time. Breese teaches using the user information and updating user information to create a user personality type. Gerace teaches that a uses actions are recorded with a date and time the session occurred as well as when date and time of when a screen is open and closed. Gerace states that time and sessions of a user interface are indications of categories of interests of the users, therefore it would have been obvious to one of ordinary skill in the art at the time of invention to have been obvious to one skilled in the art to combine Gerace and Breese to have additional information that is indicative of the person in which information would be presented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traci L. Smith whose telephone number is 571-272-6809. The examiner can normally be reached on Monday-Thursday 6:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TLS


DENNIS RUHL
PRIMARY EXAMINER